



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Great Plains Regional Office
115 Fourth Avenue S.E.
Aberdeen, South Dakota 57401



IN REPLY REFER TO:

Natural Resources
MC-301

MAY -7 2004

Docket Management System
Doc No. FAA-2004-17458-4
U.S. Department of Transportation
Room Plaza 401, 400 Seventh Street, S.W.
Washington, DC 20590-0001

Dear Department of Transportation:

The protection of tribal lands and air space rightly occupies a significant place in the implementing regulations for the National Parks Air Tour Management Act of 2000, and we welcome the opportunity to comment prior to the development of air tour management plans (ATMPs) for Badlands National Park and Mount Rushmore National Memorial. Large portions of Badlands National Park are within the exterior boundaries of the Pine Ridge Reservation, and the Oglala Sioux Tribe is presently negotiating with the National Park Service (NPS) over potential tribal management of the South Unit of the park. Tribes also have uncontested holdings within the Black Hills, and you are no doubt aware that the tribes have never fully relinquished their broader claims in that area.

Flights to units of the National Park Service can enter air space over lands held in trust by the Department of the Interior, and we ask to be named as a cooperating agency in this matter. We also urge you to consult directly and effectively with individual tribes to ensure that their concerns are understood, existing tribal ordinances are followed, and tribal lands, air space and practices are respected. Solicitation of tribal participation is required [14 CFR 136.9(d)(4)], and the regulations allow ATMPs to attach conditions for "restrictions for particular events, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts" [136.9(c)(2)], to the point that the regulations contemplate the banning of air tours altogether [136.9(c)(1)], and shall in any case "promote the adoption of quiet technology" [136.11(b)(8)]. Each of these issues and possibilities should be fully explored with the tribes. We remind you that by both aboriginal "usual and accustomed places" and by the vast original extent of treaty lands, many tribes may claim standing in protection of these parks and the flight paths to them.

Inasmuch as the FAA administrator is specifically tasked with promoting the "protection of... tribal lands" [136.11(b)(6)], we note the benefits of ATMPs to the extent they limit, control and identify certain air traffic over trust land.

We also note, however, that the regulations for some purposes give tour approval authority to the Federal Aviation Administration (FAA) administrator and NPS superintendent [136.7(g)(2)], without mention of tribal review or concurrence. Furthermore, when an operator applies for a permit in the absence of an ATMP, the administrator is to "establish an ATMP for... tribal lands" [136.9(a)]. We consider such arrangements insufficiently deferential to tribal sovereignty and inadequately protective of tribal activities and assets. The consideration of such issues under the National Environmental Policy Act (NEPA) for individual ATMPs affords an opportunity to give due regard to tribal rights, concerns and priorities.

Compliance with tribal air tour management plans is required [136.7(3)], but we urge the FAA and NPS to take a more proactive approach that also responds to current gaps in tribal regulations. Should issues be raised during NEPA scoping that have not yet been codified in tribal law, we suggest you provide technical assistance to clarify, update or promulgate appropriate tribal ordinances, in the interest of fair notice to all and inescapable consideration of tribal rights in the review of air tour applications.

Please contact Paul Hofmann, Acting Environmental Scientist, at (605) 226-7621, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alice A. Harwood". The signature is fluid and cursive, with the first name "Alice" being more prominent.

ACTING Regional Director

cc: Superintendent, Pine Ridge Agency